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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,115	01/22/2002	Arthur W. Johnston	38830/253270	9625

23370            7590            04/23/2003

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[REDACTED] EXAMINER

BARRY, CHESTER T

[REDACTED] ART UNIT      [REDACTED] PAPER NUMBER

1724

DATE MAILED: 04/23/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/768,115	JOHNSTON ET AL.	
	Examiner	Art Unit	
	Chester T. Barry	1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 23 January 2001.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 61 and 62 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 61 and 62 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

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Claims 61, 62 are rejected under 35 U.S.C. § 102(b) as being anticipated by Lin<sup>1</sup> alone or further in view of Ammann.<sup>2</sup> Lin describes a porous ("void space" 2/60<sup>3</sup>) soft block 3/3, "flexible . . . block form" 6/11 or sheet ("roll form" 3/3, "flexible roll" 6/11) made from hydroxyapatite 3/26 hard filler particles 2/42 and a binder composed of a biodegradable thermoplastic polymer 2/43. The rigid porous block appears capable of immobilizing microorganisms, and prior to sterilization 6/5 it apparently comprises at least some amount of microorganism contamination, else the skilled artisan Lin would not have suggested sterilization thereof.

Claims 61-62 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kelly<sup>4</sup> alone, or further in view of Lin. Kelly, at Example 3, describes a porous shaped block comprising a functionalized methacrylate-based polymeric binder (the infiltrant species 5/8, 6/64-7/54, 7/62-64) and hydroxyapatite 7/67. Example 1 used a feldspathic ceramic, not an apatite. In view of either Kelly's disclosure to use mixed ceramic compositions ("mixed powders including mixed glassy powders with metal oxides," 2/55, 63-65) or Lin's suggestion to use a combination of tricalcium phosphate (an apatite phosphate mineral) and hydroxyapatite, 3/27, it would have been obvious to have used a combination "mixed powder" ceramic of both the feldspathic ceramic of Example 1 and the hydroxyapatite of Example 3.

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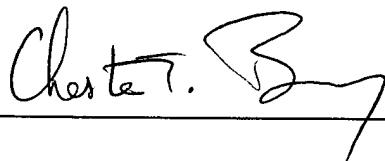
<sup>1</sup> U.S. Pat. 4,645,503

<sup>2</sup> U.S. Pat. 5,422,340

<sup>3</sup> In the expression, "numeral-vergule-numeral," the first and second numerals refer to the column and line number(s) of the relevant reference, respectively. Hence, support for "soft block" can be found at column 3 line 3 of the Lin reference. Numerals sans vergule usually refer to drawing elements shown in the reference.

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Claims 61 – 62 are rejected under 35 USC 112, 2<sup>nd</sup>, for failing to particularly point out and distinctly claim the subject matter for which patent protection is sought. It is unclear what – if any – structural limitations must be present in the medium given the preamble, i.e., "immobilization and contacting medium for microorganisms."



**CHESTER T. BARRY  
PRIMARY EXAMINER**

703-306-5921

4/21/03

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<sup>4</sup> U.S. Pat. 5,676,745